

The medical report of December 28, 1994, indicates the initial back injury occurred while pulling a tarp off of a swimming pool. Claimant's first contact with respondent, on

January 19, 1995, further supports a finding that claimant injured his back while pulling a cover off of his pool over the Christmas holidays. This report also indicates claimant was suffering right leg pain at that time.

Claimant did not allege accidental injury to respondent as arising out of and in the course of his employment until January 23, 1995.

The Appeals Board finds based upon the evidence presented that claimant has failed to prove accidental injury arising out of and in the course of his employment and the Order denying claimant benefits should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Shannon S. Krysl dated August 24, 1995, should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: M. Steven Wagle, Wichita, Kansas  
Edward D. Heath, Jr., Wichita, Kansas  
Shannon S. Krysl, Administrative Law Judge  
Philip S. Harness, Director